



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** L.F. Leiker Construction Co., Inc.

**File:** B-238496

**Date:** May 4, 1990

L.F. Leiker, for the protester.  
Colonel Herman A. Peguese, Department of the Air Force, for the agency.  
Dallas K. Bless, for Eastern Colorado Builders, Inc., an interested party.  
Mary G. Curcio, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Agency properly refused to permit protester to correct an alleged mistake in its bid where the correction would be a recalculation of the bid after bid opening to include an item not originally considered.

### DECISION

L.F. Leiker Construction Co., Inc., protests the Department of the Air Force's denial of its request to correct an alleged mistake in its bid submitted in response to invitation for bids (IFB) No. F05611-89-B-0041.

We deny the protest.

The IFB requested bids to install trash compactors in accordance with specification No. 7-06-2416 and related drawings at Vandenberg, Sijan and Mitchell Halls at the United States Air Force Academy, Colorado Springs, Colorado. The IFB was divided into five line items, each covering installation of a trash compactor at a different location.

Eight bidders responded to the IFB with bids ranging from Leiker's low bid of \$183,325 to \$268,098. The second low bid was \$196,349. Because Leiker's bid was approximately 7 percent lower than the second low bid, the Air Force construction specialist requested Leiker to verify its bid. Leiker responded with a letter contending that its bid contained an error in line item No. 0001, installation and

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related work at Vandenberg Hall, stairway No. 4. Leiker explained that in calculating its bid for this line item it failed to include the cost of concrete work. Leiker submitted its original worksheets, which showed no costs for the work at issue, and an Air Force form 3052, "Construction Cost Estimate Breakdown," prepared after bid opening, on which Leiker computed the costs to perform the concrete work. Leiker initially requested that its bid be increased by \$8,644.16, which included profit and overhead computed at 25 percent of the amount of the alleged mistake, but later amended the request to \$6,735.45 after the Air Force informed Leiker that its proposed profit and overhead were excessive.

The Air Force reviewed the information submitted by Leiker and concluded that while the evidence reasonably demonstrated that Leiker had made a mistake in its bid, the evidence did not clearly and convincingly establish the amount of the intended bid. The Air Force therefore informed Leiker that it could withdraw the bid or perform at the price offered in it, but that correction would not be permitted. Initially, Leiker orally agreed to perform at its offered price, but later submitted a written request that its bid be increased by \$7,879. After the Air Force again refused to correct the bid, Leiker filed its protest in our Office, asking that its bid be increased by \$4,664.01.

Leiker explains that in preparing its bid, it organized the bid sheet with headings for each major component of the work. Leiker then received quotations from suppliers and subcontractors and computed the costs of the work it would perform, and entered the costs and low quotations in the appropriate columns. According to Leiker, it simply overlooked the required concrete work in preparing its bid for line item No. 0001. Leiker argues, however, that it should be permitted to correct the bid because it provided clear and convincing evidence of the intended bid.

Leiker first notes that in its original cost estimate worksheet for Vandenberg Hall there is a blank line for the concrete work which, according to Leiker, clearly demonstrates that Leiker intended to include in its bid an amount for the concrete work. Leiker further argues that the amount it intended to include for the work also is clear from its worksheets. In this regard, Leiker states that line item No. 0003, installation of the trash compactor at Mitchell Hall, requires concrete work similar to that required at Vandenberg Hall, that is, demolition of existing concrete, installation of curb and gutter, and paving. Leiker contends that since its worksheets show the costs it

computed to perform the work at Mitchell Hall, the amount Leiker intended to include for the work at Vandenberg Hall can be derived by using the unit costs established for the Mitchell Hall work. Thus, Leiker states, its worksheets show that it priced demolition of concrete at Mitchell Hall at \$47.50 per cubic yard; since there are 1.85 cubic yards of concrete to be demolished at Vandenberg Hall, Leiker argues that it is clear that it intended to include \$87.88 in its bid for concrete demolition at Vandenberg Hall.

Similarly, Leiker asserts, the worksheets it submitted demonstrate that it priced installation of new curb and gutter at Mitchell Hall at \$17.35 per lineal foot which would add \$1,908.50 to its bid to install 110 lineal feet of new curb and gutter at Vandenberg Hall. Finally, Leiker states, to compute the cost of driveway paving it would have used the \$1 per square foot it proposed for walk paving at Mitchell Hall, adjusted by a formula because the driveway slab required at Vandenberg Hall is thicker than the walkway slab. According to Leiker, this would have added \$2,112.88 to its bid for driveway slab paving, for a total of \$4,109.26 to perform these three elements of the concrete work. Leiker thus requests that it be permitted to increase its bid by \$4,109.26, plus 13.5 percent of this amount, which is the percentage of cost it included in its worksheets to cover profit and overhead, for a total of \$4,664.01.

The Air Force replies that while it found reasonable evidence of the existence of a mistake, it properly refused to permit Leiker to correct the bid because Leiker did not present clear and convincing evidence of the amount it intended to bid. The Air Force asserts that the worksheets submitted by Leiker are not sufficient to show Leiker's intended bid for the concrete work at Vandenberg Hall, and that the Air Force form 3052 submitted by Leiker to show its computations was completed after bid opening and thus cannot be used as evidence of the intended bid.

A bidder seeking upward correction of its bid before award must submit clear and convincing evidence showing that a mistake was made, how the mistake occurred and the intended price. Federal Acquisition Regulation § 14.406-3(a); American Block Co., B-235053, July 31, 1989, 89-2 CPD ¶ 90. Whether the evidence of the mistake and the bid intended meets the clear and convincing standard is a question of fact and we will not disturb an agency's decision based on this evidence unless it lacks a reasonable basis. Id. In contrast with the clear and convincing evidence required for bid correction, withdrawal of a bid requires a lesser degree of proof and may be permitted if it reasonably appears that

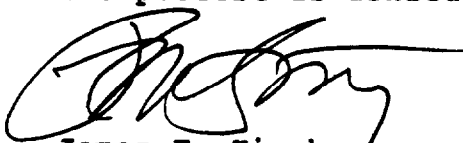
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an error was made. Southwest Marine, Inc., B-225686,  
May 14, 1987, 87-1 CPD ¶ 510.

We agree with the Air Force that the evidence submitted by Leiker was sufficient to permit Leiker to withdraw its bid or to waive the error, but was not sufficient to meet the clear and convincing error standard necessary to correct the bid. The fact that there is a blank line for concrete work on Leiker's worksheet for Vandenberg Hall is evidence that Leiker was aware that certain concrete work would have to be performed there. Even assuming the worksheet entry shows that Leiker intended to price the concrete work, however, Leiker has not provided clear and convincing evidence of what the intended price was. Contrary to Leiker's position, nothing in the worksheets demonstrates that Leiker would have computed its cost for concrete work at Vandenberg Hall using the same analysis and the same unit prices it used at Mitchell Hall. In fact, one could conclude from the worksheets that Leiker did not intend to treat the two locations similarly. In this regard, while the worksheet for Mitchell Hall separately lists the costs for the various tasks comprising the concrete work, the worksheet for Vandenberg Hall has only one general heading for "concrete, 7 [inches] existing driveway curb & gutter."

More importantly, Leiker did not include a computation in its worksheet for the cost of the concrete work at Vandenberg Hall. Thus, it appears that Leiker is seeking not to have its bid corrected to include a previously calculated amount which it intended to include in its bid and inadvertently omitted, but, rather, to compute a price after bid opening. Notably, between the protests to the Air Force and our Office, Leiker has requested that its bid be corrected by four different amounts. As stated above, the rule permitting bid correction does not allow a bidder to recalculate and change its bid after bid opening to include factors for which the bidder did not intend a precise price when the bid was submitted. Amtech Elevator Servs., B-216067, Jan. 11, 1985, 85-1 CPD ¶ 31; General Elevator Co., Inc., B-190605, Jan. 31, 1978, 78-1 CPD ¶ 81. Accordingly, we find that the Air Force properly refused to allow Leiker to correct its bid.

The protest is denied.

  
James F. Hinchman  
General Counsel  
